

SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session

Vote No. 167

July 10, 1997, 2:09 pm
Page S-7160 Temp. Record

DEFENSE AUTHORIZATION/Abortions at Overseas DoD Facilities

SUBJECT: National Defense Authorization Act for fiscal year 1998 . . . S. 936. Murray amendment No. 593.

ACTION: AMENDMENT REJECTED, 48-51

SYNOPSIS: As reported, S. 936, the National Defense Authorization Act for fiscal year 1998, will authorize a total of \$268.2 billion in budget authority for national defense programs (the President requested \$265.6 billion). In real terms, this bill will authorize \$3.3 billion less than was provided in fiscal year (FY) 1997.

The Murray amendment would strike the current-law prohibition on using Federal military facilities overseas to perform abortions. That prohibition applies unless an abortion is necessary to save the life of the mother or unless the pregnancy is the result of rape or incest.

Those favoring the amendment contended:

The Murray amendment would repeal the language adopted two years ago that prohibits military personnel and their dependents from exercising their constitutional freedom to choose at overseas military bases, even when they pay for the abortions themselves. Due to the unavailability of abortions in many countries in which the United States has military facilities, the current-law prohibition effectively nullifies the right for some American women to have an abortion. When they are overseas, they lose their constitutional right. Our colleagues tell us that military women who decide to have abortions and who are stationed in countries that outlaw abortions need only fly to the United States or other countries to have their abortions. While it is true that they can take leave, and that while on leave they can fly on military planes for free, it is also true that this arrangement raises numerous troubling issues. Why should a woman, who has made the difficult, personal choice of having an abortion have to go to her commanding officer and ask for leave? Commanding officers are frequently going to be more or less willing to give leave depending on the reasons for which it has been requested. We think this raises a very troubling privacy issue. If a woman were just allowed to go to a local military

(See other side)

YEAS (48)			NAYS (51)			NOT VOTING (1)	
Republicans (7 or 13%)	Democrats (41 or 93%)		Republicans (48 or 87%)	Democrats (3 or 7%)		Republicans (0)	Democrats (1)
Chafee	Akaka	Johnson	Abraham	Helms	Breaux		Mikulski- ²
Collins	Baucus	Kennedy	Allard	Hutchinson	Ford		
Gorton	Biden	Kerrey	Ashcroft	Hutchison	Reid		
Jeffords	Bingaman	Kerry	Bennett	Inhofe			
Snowe	Boxer	Kohl	Bond	Kempthorne			
Specter	Bryan	Landrieu	Brownback	Kyl			
Stevens	Bumpers	Lautenberg	Burns	Lott			
	Byrd	Leahy	Campbell	Lugar			
	Cleland	Levin	Coats	Mack			
	Conrad	Lieberman	Cochran	McCain			
	Daschle	Moseley-Braun	Coverdell	McConnell			
	Dodd	Moynihan	Craig	Murkowski			
	Dorgan	Murray	D'Amato	Nickles			
	Durbin	Reed	DeWine	Roberts			
	Feingold	Robb	Domenici	Roth			
	Feinstein	Rockefeller	Enzi	Santorum			
	Glenn	Sarbanes	Faircloth	Sessions			
	Graham	Torricelli	Frist	Shelby			
	Harkin	Wellstone	Gramm	Smith, Bob			
	Hollings	Wyden	Grams	Smith, Gordon			
	Inouye		Grassley	Thomas			
			Gregg	Thompson			
			Hagel	Thurmond			
			Hatch	Warner			

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

hospital for an abortion, her commanding officer would not have to review her leave request over this matter which she might rather not discuss. Also, a woman might have to wait for a period of days or weeks before she received leave or before she was able to get a free flight to the United States or some other country where abortion is legal. Once a woman has made this difficult choice, making her wait before she exercises it places an undue burden on her, and is thus unconstitutional under *Planned Parenthood v. Casey*. A final point that needs to be considered is that this policy ends up costing the taxpayers money. If a woman does not go on leave, but instead has an abortion that she pays for at a local military hospital, the taxpayers do not have to pay the cost of her military transport. Even if the Government picked up the cost of the abortion, it would still be cheaper than flying her to another country for her to have an abortion. The bottom line is that military women, who are putting their lives on the line for their country, are having their constitutional rights infringed. The Murray amendment would correct this wrong.

Those opposing the amendment contended:

The Murray amendment is a solution in search of a problem. Except in extreme cases, abortions at overseas military facilities were banned between 1988 and 1993, and they have been banned again for the last 2 years. No case was ever reported of the earlier ban hindering the ability of a woman to get an abortion, and no case has been reported under the current ban. Our colleagues have their theories, but we will stick with the facts. This ban is not intended to hinder, nor does it hinder, the right that the Supreme Court has said exists for women to obtain abortions. It has nothing to do with whether women may have abortions. Instead, it is about who will pay for them, and it is about recognizing that the issue is so controversial, so divisive, and so emotionally charged that the Federal Government should not be directly involved in performing abortions.

The Defense Department has a large number of elective medical procedures for which it will not pay. Any member of the military or their dependents, if they wish, may take leave, fly to a country in which any of those procedures are available, and pay for them themselves. It is a simple, common practice. In fact, because it is so easy to obtain leave and travel, the Defense Department is not aware of any single problem ever arising from this policy of not performing abortions at overseas facilities. We asked the Assistant Secretary of Defense the following questions: "Has the Department had any difficulty in implementing the current policy?"; "Have any formal complaints been filed concerning this policy, to the best of your knowledge and information?"; "Have any legal challenges been instituted concerning this policy?"; "Have any members or their dependents been denied access to any abortion as a result of this policy?"; and "Have any members or their dependents been denied access to military transport for the purpose of procuring an abortion?" The answer to every question was "No."

The only effect of this policy has been to stop the United States from being directly involved in paying for and performing abortions on demand, for any reason. Many Americans have very strong, moral objections to abortions, and nearly all Americans have very mixed feelings. Many Americans support abortions in extreme situations as being the lesser of two evils, but in most other cases they are against it. For instance, they oppose using abortion as a method of birth control, they oppose it for economic reasons, and they oppose late-term abortions. Even the most strident proponents of legal abortions are quick to state that they think that abortions should be rare. (Military doctors are no different; in the 2 years that President Clinton's Executive order that forced the Defense Department to perform abortions on demand was in effect, the Defense Department gave each of its doctors the right to refuse on moral grounds, and journalists investigating the implementation of the order in Europe found that all 44 military doctors there had exercised that right.)

In 1979, the Hyde amendment was passed to block taxpayer funding of abortions. In *Harris v. McCray*, the Supreme Court decided that refusing taxpayer funding of abortions is legal; it decided that the right to an abortion did not include the right to tax people to pay for it. Defense facilities are paid for by the taxpayers. The buildings, the equipment, the supplies, and the doctors' salaries are all paid for through the defense budget. If an abortion is performed at a defense facility, even if the woman pays for it the taxpayers still bear part of the burden because they have paid for all of the facilities and they pay that doctor's salary.

Further, assuming that it were somehow possible to relieve the taxpayers of having to pay for abortions performed at military hospitals, they still should not be performed. The United States should not in effect become a hired abortionist. Abortion may be legal, but that does not mean that the American people want to see their Government become an abortion provider. This issue is too controversial. We should preserve the separation that currently exists. The Supreme Court has said that abortion is legal as an individual, private matter, but that does not mean that the Government, which represents all Americans, should disregard the feelings of pro-life Americans by directly involving itself in the performance of abortions.

The stated purpose of the Murray amendment is to remove restrictions on military personnel's access to abortion. No such restrictions exist. The effect of the amendment would be to involve the Federal Government, which represents all Americans, most of whom favor at least some restrictions on abortion, in the performance of abortions on demand. The Federal Government should not be directly involved in the performance of abortions against the wishes of so many Americans. We therefore strongly oppose the Murray amendment.